

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JADWYN RIVERA**

Claimant

VS.

**DOLLAR GENERAL**

Respondent,  
Self-Insured

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Docket No. 1,004,020

**ORDER**

Respondent appealed the November 22, 2002 preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish.

**ISSUES**

This is a claim for an April 25, 2002 accidental injury while lifting some heavy boxes at work. In the November 22, 2002 Order, Judge Frobish granted claimant's request for the payment of medical bills that claimant had incurred for treatment of endometrial polyps and an abdominal wall fistula, which claimant contends were aggravated by the lifting incident.

Respondent contends Judge Frobish erred. On page one of its brief to the Board, respondent argues "the Administrative Law Judge exceeded his authority in awarding medical expenses to the Claimant as the weight of the competent evidence established that the maladies which claimant suffers from neither arise out of nor in the scope of the employment with Respondent." Accordingly, respondent requests the Board to reverse the November 22, 2002 Order.

Conversely, claimant requests the Board to affirm the Order. In her brief to the Board, claimant quotes language from one of claimant's physicians that relates claimant's alleged lifting incident to her present problems and present need for medical treatment.

The only issue before the Board on this appeal is whether claimant aggravated preexisting endometrial polyps and a preexisting abdominal fistula in the alleged lifting incident at work.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record compiled to date, the Board finds and concludes:

The November 22, 2002 preliminary hearing Order should be affirmed.

The Board finds that it is more probably true than not that claimant injured herself while lifting some boxes on April 25, 2002, while working for respondent. Claimant testified that she felt a tear and pull in her stomach at the time of the incident. After the incident claimant experienced soreness in her stomach. Shortly afterwards, she began experiencing vaginal bleeding.

The next morning claimant sought treatment at the Wesley Medical Center emergency room. Claimant advised the emergency room personnel that she had injured herself lifting at work.

After receiving treatment from others, respondent eventually referred claimant to see Dr. Byron Cline. Claimant entered into evidence Dr. Cline's September 10, 2002 letter. According to Dr. Cline, the lifting incident did not cause claimant's endometrial polyps but it was highly probable that lifting could cause claimant's polyps to bleed. Regarding the abdominal pain, the doctor stated that the lifting incident aggravated a preexisting fistula. In the September 10, 2002 letter, the doctor wrote, in part:

The lifting incident did not cause her endometrial polyps. In my opinion, it is highly probable that certain lifting activity at a certain time in her cycle could start the polyps bleeding. Once endometrial polyps do begin bleeding, a lot of times they do not stop until they are surgically removed or passed spontaneously, which is very rare. . . .

. . . .

It is my opinion that this patient has an incisional cutaneous fistula at some depth of the anterior abdominal wall, and that this was aggravated by the lifting incident, probably a micro-abscess that was walled off and some adhesions that were somehow rearranged, opening the abscessed area and causing it to begin draining heavier. This has created a process of inflammation that has continued to bother her and cause pain. This is documented by my examination and the findings of the tenderness along the area just above and connected to that fistula. It is my opinion that the lifting incident initiated again symptoms related to increased discharge and pain from a problem that obviously pre-existed from the patient's history and previous medical experiences.

An accident is compensable under the Workers Compensation Act even where the accident only serves to aggravate a preexisting condition.<sup>1</sup> When there is a preexisting condition, the test is not whether the accident caused the condition, but whether the accident aggravated or accelerated it.<sup>2</sup>

Based upon this preliminary hearing record, the evidence is overwhelming that claimant aggravated her endometrial polyps and abdominal fistula on April 25, 2002, while lifting at work. The Board concludes that claimant's accident arose out of and in the course of employment with respondent. Consequently, claimant is entitled to receive medical benefits under the Workers Compensation Act to treat the injuries that she sustained from that accident.

As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.<sup>3</sup>

**WHEREFORE**, the Board affirms the November 22, 2002 Order entered by Judge Frobish.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 2003.

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BOARD MEMBER

c: Andrew E. Busch, Attorney for Claimant  
Jeffrey W. Deane, Attorney for Respondent  
Jon L. Frobish, Administrative Law Judge  
Director, Division of Workers Compensation

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<sup>1</sup> *Odell v. Unified School District*, 206 Kan. 752, 481 P.2d 974 (1971).

<sup>2</sup> *Woodward v. Beech Aircraft Corp.*, 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

<sup>3</sup> K.S.A. 44-534a(a)(2).